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October 3, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Notice of Ex Parte Communications -- WC Docket 17-84

Dear Ms. Dortch:

This is to notify you pursuant to Section 1.1206 of the Commission's Rules that on October 2, 2017 the undersigned along with Aryeh Fishman Associate General Counsel of the Edison Electric Institute, Allen Bell DOT/Joint Use Manager Georgia Power Company, Andrew Russell Lead Engineer, Joint Use Department Duke Energy and Eric Langley of Langley & Bromberg LLC ("the EEI Group") met with Daniel Kahn, Adam Copeland, Michael Ray, Lisa Hone, Eric Ralph, and Nicole Desbois of the Wireline Competition Bureau and Paul Lafontaine of the Office of Strategic Planning & Policy in connection with the above-referenced proceeding.

The EEI Group discussed the multi-billion dollar investment that the electric industry is making in order to modernize this nation's power grid. They noted that this new smart energy infrastructure has been enabled by the convergence of energy and telecommunications technologies and that the industry's reliance on communications is increasing. Further, they pointed out that as a result these converged technologies, electric companies have made a commitment to and begun to partner with localities and others to develop smart communities.

The EEI Group then discussed pole attachment rate issues. They explained how joint use agreements are structured and noted that joint use agreements are a key enabler to broadband development. These agreements are different from pole attachment license agreements, as the Commission itself recognized in the 2011 Order, and the fact that some ILECs have made a business decision to stop owning poles should not affect the continued use of joint use agreements. The disruption of settled contract expectations would be disruptive to broadband deployment.

The EEI Group went on to state that pole attachment rates are not a meaningful factor in wireline broadband deployment decisions. Moreover, the Commission's current policies, and those proposed in the NPRM, do not promote collaboration between the pole owner and the communications attacher. Rather than continuing with "more of the same" type of regulation of the providers of pole space, the Commission should instead focus on policies that provide the proper incentives to encourage collaboration and innovative solutions.

The EEI Group also explained why wireless antenna installations should be treated differently than wireline attachments. The EEI Group emphasized that the need for incentives to collaborate was even greater in the wireless deployment context because wireless attachments almost always require electric supply space make-ready or pole change-outs.

Finally the EEI Group indicated that make-ready is not a profit center for electric companies and that make-ready costs should not be capped on the timelines shortened.

The EEI Group used the attached document.

Please contact the undersigned if you have any questions.

Sincerely,

Stinson Leonard Street LLP

H. Russell Frisby Jr.

H. Russell Frisby, Jr

HF:SLS

Attachment

cc Daniel Kahn
Adam Copeland
Michael Ray
Lisa Hone
Eric Ralph
Nicole Desbois
Paul Lafontaine

Georgia Power

FCC Pole Attachment Issues
Rates

Rate Issues – ILECs

Joint Use Agreements are a key enabler to broadband deployment

- Joint use relationship with electrics was developed to efficiently utilize pole networks
- Both parties agreed to ALL terms and conditions
- Both parties agreed to share the cost of a single network of poles rather than building redundant pole lines.
  - Both parties saved money
- Agreements are typically premised upon target ownership ratios (50/50, 45/55, 40/60)
- If one party owns more than its target ownership %, the other party makes an adjustment payment to offset the additional ownership costs

Rate Issues - ILECs

The situation today....

- Some ILECs made a business decision to stop owning poles
  - Electric utilities are first to respond in an emergency
  - Electric utilities take better care of their poles
  - ILECs were realizing cost pressures from competition
- Many smaller ILECs did not make this decision and still maintain ownership levels closer to parity
- ILECs have assigned territory but also work outside their territory as CLECs

Rate Issues – ILECs

Contract Issues

- Joint Use agreements are different than Pole Attachment License Agreements
- Generally, there is no rate per foot in a Joint Use Agreement
- Both parties have allocated space on a pole
  - ☐ Both parties can make multiple attachments
  - ☐ Both parties allowed to use more than allocated space
- As a result........virtually no make-ready for ILECs
- ILECs have been offered the terms of a license agreement for new joint use poles but have refused – they want the best of both arrangements

Rate Issues – ILECs

Joint Use Agreements are one of the most powerful tools in the Broadband Deployment toolbox

- Much easier deployment due to reserved space on electric poles and minimal or nonexistent make-ready
  - Google vs AT&T in Atlanta
- ILECs already have space on poles in rural America – What is stopping the deployment?
- Further tampering with these long standing contracts by the FCC will hamper broadband deployment
- Without the benefit of Joint Use Agreements, ILEC deployments will slow to the pace of their competition
- ILEC revenue is included in a regulated utility's rate base
  - ☐A decrease in this revenue will result in an increase in electric rates

Rate Issues – ILECs

EEI's recommendation

- Take no further action than what was done in the 2011 Order
- FCC should consider reversing this part of the 2011 Order
  - ILECs have had more than six years to "take their shot"
  - The potential for further disruption in settled contract expectations would be disruptive to broadband deployment

Rate Issues – Mandatory Wireline Attachments

The FCC's rate policies do not promote collaboration between the pole owner and the communication attacher

- Pole attachment rates are not a meaningful factor in broadband deployment investment decisions.
- Negotiated rates do not prevent broadband deployment where the communication attacher wants to be in an area.
- In the cases where the pole owner was treated as a partner, deployment has gone much smoother.

"Pole owners are not barriers to deployment, pole owners are partners" – Christopher Yoo, July BDAC Committee meeting

Rate Issues – Mandatory Wireline Attachments

How has the rate evolved?

- Cable rate is established in 1978
- Telecom Rate established in Telecom Act
- 2011 Pole Attachment Order
  - Telecom rate is set equivalent to Cable Rate in most instances
- 2015 Telecom Rate Order
  - Telecom rate is further adjusted downward
- Current proposals
  - Remove capital costs
  - Per pole vs per foot

Rate Issues – Mandatory Wireline Attachments

EEI's Recommendation

- Returning the Mandatory Rate to the Telecom Rate as originally envisioned by Congress would incent pole owners to be engaged and would not negatively impact broadband deployment
- FCC should not even be considering further reductions to the rate
  - This would be "more of the same"
  - Heaping further restrictions on the providers of pole space is <u>not</u> the solution

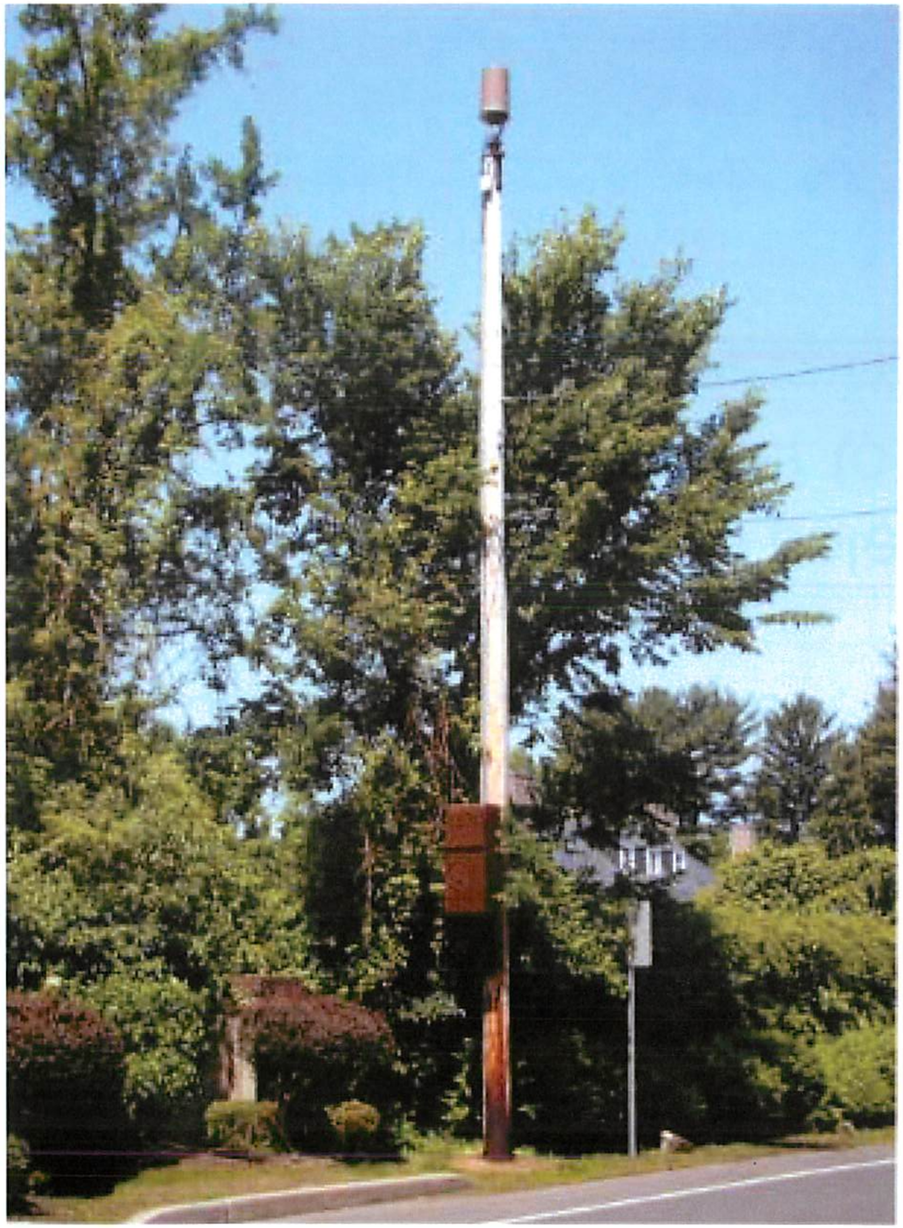
"The more heavily you regulate something, the less of it you're likely to get" – Chairman Pai, April 2017 Remarks at the Newseum

Rate Issues - Wireless Attachments

Wireless should be treated differently than wireline and not as a form of wireline in the rates and rules

- This is the proverbial "square peg and round hole" problem
  - FCC's rate formulas – particularly the telecom rate formula – presume only wireline attachments
- The exercise of trying to apply the wireline rate to an antenna causes confusion at best and anti-competitive results at worst
  - Almost all antenna designs put ancillary equipment in the so-called "unusable space"

Rate Issues – Wireless Attachments



Rate Issues – Wireless Attachments

EEI's Recommendation

- Small cell and other wireless attachments should be treated more like colocation on towers

- Wireless rates on electric distribution poles should provide an incentive for the pole owner to be engaged

Rate Issues – Make-ready

Electric utilities have the challenge of managing their core business as well as make-ready

- Core Business Activities
  - New business
  - Maintenance
    - ☐ Conductor replacement
    - ☐ Pole maintenance and replacement
    - ☐ Lighting upgrades
    - ☐ Reliability Improvements
    - ☐ Load Flow and Growth Projects
  - Relocations for highway projects
  - Outdoor Lighting and Alternative Revenue Projects

Rate Issues – Make-ready

Make-ready is not a profit center for pole owners; it is cost based

- In order to utilize someone else's infrastructure, you must pay to make room for your equipment
- Reducing timelines only means additional resources must be hired so the cost increases and quality suffers to the detriment of deploying broadband
- Make-ready costs are based on the programs established by the state regulatory agency
- Any efforts to standardize make-ready or somehow reduce the costs for communication attachments will increase the costs for the pole owner and in turn the electric rate payer

Rate Issues – Make-ready

EEI's Recommendation

- The most contentious and time consuming aspect of make-ready is the movement of the incumbent communication attachments. One Touch Make Ready in the communication space will improve this aspect of the process
- The BDAC may make some recommendations on improvements in the communication during the make-ready process but little should change on the length of the timelines already in place
- Make-ready costs should not be capped in any way by the FCC. This would only result in an increased cost to the pole owner which would not promote collaboration for the deployment of broadband

Georgia Power